

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 STATE OF WASHINGTON,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF
15 HEALTH AND HUMAN SERVICES;
16 ALEX M. AZAR, in his official capacity
as the Secretary of the United States
Department of Health and Human Services,

17 Defendants.
18

No. 2:20-cv-01105-JLR

**MOTION FOR LEAVE TO FILE BRIEF
OF U.S. HOUSE OF
REPRESENTATIVES AS *AMICUS
CURIAE* IN SUPPORT OF PLAINTIFFS**

19 Elizabeth B. Wydra
20 Brianne J. Gorod
21 Ashwin P. Phatak
22 CONSTITUTIONAL ACCOUNTABILITY
CENTER
23 1200 18th Street NW, Suite 501
Washington, D.C. 20036-2513
24 Tel: (202) 296-6889
brianne@theusconstitution.org
25

Douglas N. Letter
General Counsel
Todd B. Tatelman
Megan Barbero
Josephine Morse
William E. Havemann
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, D.C. 20515
Tel: (202) 225-9700
douglas.letter@mail.house.gov

26
27 *Counsel for Amicus U.S. House of Representatives*
28

1 *Amicus curiae* U.S. House of Representatives respectfully moves the Court for leave to
 2 file the attached *amicus curiae* brief in support of Plaintiff’s Motion for Preliminary Injunction
 3 (Dkt. No. 4). All parties have consented to the filing of this amicus brief. A copy of the
 4 proposed *amicus curiae* brief is appended as an exhibit to this motion. The House filed an
 5 identical brief *amicus curiae* in two similar cases in the U.S. District Court for the District of
 6 Columbia, *see* Dkt. Nos. 34, 36, *Whitman-Walker Clinic, Inc., et al. v. U.S. Dep’t of Health and*
 7 *Human Servs.*, Case No. 20-cv-01630-JEB (July 15, 2020), and the U.S. District Court for the
 8 Eastern District of New York, *see* Dkt. Nos. 13, 14, *Walker, et al., v. Azar, et al.*, Case No. 20-
 9 cv-02834-FB-SMG (July 22, 2020), with authorization from those courts.

12 **I. IDENTITY AND INTEREST OF *AMICUS***

13 *Amicus* is the U.S. House of Representatives. The Trump Administration has issued a
 14 new rule to implement Section 1557 of the Patient Protection and Affordable Care Act, and that
 15 new rule withdraws protection against discrimination in health care because of an individual’s
 16 sexual orientation or gender identity. Proposed *amicus* has a special interest in the subject matter
 17 of this case because this case involves the question whether that new rule is consistent with the
 18 Act, a law duly enacted by Congress. The House has a strong institutional interest in the
 19 effective implementation of the Affordable Care Act and in ensuring that the millions of
 20 Americans who have benefited from its reforms and protections continue to do so.

23 **II. REASONS WHY MOTION SHOULD BE GRANTED**

24 District courts have “broad discretion” to appoint *amici curiae*. *Skokomish Indian Tribe*
 25 *v. Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (quoting
 26 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)). District courts may consider briefs from
 27 non-parties “concerning legal issues that have potential ramifications beyond the parties directly
 28

involved or if the amicus has ‘unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Id.* (quoting *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)). The “classic role” of *amici curiae* is to “assist[] in a case of general public interest, supplement[] the efforts of counsel, and draw[] the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982).

The proposed *amicus* brief offers the Court the unique perspective of the House regarding the reasons it passed the Affordable Care Act. Specifically, as the proposed *amicus* brief explains, Congress passed the Affordable Care Act after significant study into the problems with then-existing health insurance markets, and the House is thus particularly well suited to explain to the Court why Congress enacted this landmark legislation and how it has helped ensure that all Americans have access to quality, affordable health insurance and care, including through Section 1557’s broad prohibition on discrimination in health care. For those reasons, *amicus* has unique knowledge about, and a strong interest in, the question whether the Trump Administration’s decision to withdraw certain existing protections against discrimination in health care for LGBTQ individuals is consistent with the plan that Congress put in place when it passed the Affordable Care Act. As *amicus* knows, it is not.

III. TIMELINESS

Proposed *amicus* submits this motion, and the attached proposed brief *amicus curiae*, on August 3, 2020, seven days before Defendants must submit their response to Plaintiffs’ motion for a preliminary injunction. This submission is therefore timely.

1 **IV. CONCLUSION**

2 Proposed *amicus* U.S. House of Representatives respectfully requests permission to file
3 the attached *amicus curiae* brief in support of Plaintiff's Motion for a Preliminary Injunction.
4

5 DATED this 3rd day of August, 2020.

6 Elizabeth B. Wydra
7 Brianne J. Gorod
8 Ashwin P. Phatak
9 CONSTITUTIONAL ACCOUNTABILITY
10 CENTER
11 1200 18th Street NW, Suite 501
12 Washington, D.C. 20036-2513
13 Tel: (202) 296-6889
14 brianne@theusconstitution.org

/s/ Douglas N. Letter
Douglas N. Letter
General Counsel
Todd B. Tatelman
Megan Barbero
Josephine Morse
William E. Havemann
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, D.C. 20515
Tel: (202) 225-9700
douglas.letter@mail.house.gov

15 *Counsel for Amicus U.S. House of Representatives**

16 August 3, 2020
17
18
19
20
21
22
23
24
25

26 * Attorneys for the Office of General Counsel for the U.S. House of Representatives,
27 including any counsel specially retained by the Office of General Counsel, are "entitled, for the
28 purpose of performing the counsel's functions, to enter an appearance in any proceeding before
any court of the United States or of any State or political subdivision thereof without compliance
with any requirements for admission to practice before such court." 2 U.S.C. § 5571(a).

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel who have entered an appearance. I further certify that on August 4, 2020, service of the foregoing document will be accomplished via Fedex Overnight Delivery to the following:

William K. Lane III
Counsel to the Assistant Attorney General
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dated: August 3, 2020

/s/ Douglas N. Letter
Douglas N. Letter